

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

August 11, 2011

In the Matter of DEZAROV/LEVACK, Minors.

No. 301949

Washtenaw Circuit Court

Family Division

LC Nos. 2009-000053-NA

2009-000054-NA

2009-000055-NA

2009-000056-NA

Before: CAVANAGH, P.J., and WILDER and OWENS, JJ.

PER CURIAM.

Respondent appeals as of right from the order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3). We affirm.

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination has been established by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). This Court reviews that finding under the clearly erroneous standard. MCR 3.977(K); *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re BZ*, 264 Mich App 286, 296-697; 690 NW2d 505 (2004).

Respondent's parental rights were terminated pursuant to MCL 712A.19b(3)(c)(i),(3)(g), and (3)(j), which provide as follows:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

Respondent contends that she substantially complied with the case-treatment plan, and therefore there was not clear and convincing evidence to support termination of her parental rights. However, it is not simply enough that respondent participated in services pursuant to her treatment plan. *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005), superseded by statute in part on other grounds *In re Hansen*, 285 Mich App 158, 163; 774 NW2d 698 (2009), vacated by 486 Mich 1037 (2010). Respondent must also have *benefited* from the services offered. *Id.* In this case, there was no indication that respondent benefited from the treatment plan. At the time of the termination hearing, respondent had not adequately addressed in any meaningful way her substance abuse. Respondent's substance abuse history dated back at least ten years. She was provided services, many of them intensive, since 2007. Despite the services offered, respondent clearly did not benefit from the treatment plan. She failed to consistently submit drug screens, frequently tested positive for cocaine and marijuana, and, indeed, tested positive for cocaine during the final week of the termination hearing.

Ample evidence was presented at the termination hearing from which the trial court could conclude that respondent had not adequately addressed her substance abuse. There also was compelling evidence that she would not be able to do so within a reasonable time. At the time of the termination hearing, the children had been in care for well over a year. Respondent's therapist testified that respondent would have to maintain sobriety for at least six months before one could conclude that her addiction was in remission. Respondent's case worker hoped to see respondent sustain forward momentum for at least 90 days so that she could move to the next level in her treatment plan. Despite the multitude of services offered to respondent, she was only able to maintain sobriety for a few weeks before she would, once again, relapse. Furthermore, it would appear from the evidence that respondent was not invested in her treatment plan, and this was further complicated by her refusal to take responsibility for her addiction. Respondent blamed everybody else for her relapses. Considering the long-term nature of her addiction and respondent's apparent lack of personal accountability, there was considerable evidence for the court to conclude that respondent would not be able to address her addiction and demonstrate that she could safely parent her children within a reasonable time.

Based upon the foregoing, we conclude that the trial court did not clearly err when it found clear and convincing evidence to support termination of respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), (3)(g), and (3)(j). There was clear and convincing evidence that the conditions that caused the children to be removed had not been rectified and would not be rectified within a reasonable time, that respondent could not provide the children with proper care and custody within a reasonable time, and that there was a reasonable likelihood the children would be harmed if returned to respondent's care.

Respondent next argues that petitioner failed to make reasonable efforts toward reunification. Respondent specifically contends that it was incumbent upon petitioner to provide respondent with intensive inpatient substance-abuse treatment. Respondent reasons that, had she been offered this additional service, she would have successfully addressed her substance abuse issues. However, petitioner only must make *reasonable* efforts to promote reunification and to avoid termination of parental rights. *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008). Thus duty does not correlate to having to provide every conceivable service, especially when there is no funding for it.

After reviewing the record, we conclude that the trial court did not err when it found that petitioner had made reasonable efforts to rectify the conditions that led to the children's removal, to reunify the family, and to avoid termination of parental rights. Respondent was offered two separate rounds of substance abuse classes with First Step. Respondent was then offered inpatient substance abuse treatment at Sacred Heart. Although there was conflicting evidence regarding why the inpatient treatment ended after two weeks, the parties both appear to assume that it was in fact due to a lack of funding. After respondent was discharged from the inpatient program, she was not simply ignored. Instead, she was offered intensive outpatient treatment at Greenbrook. Respondent testified that she was informed she was ready for this intensive outpatient therapy when she was discharged from Sacred Heart. During this intensive outpatient treatment, respondent attended three days a week, three hours per day. Respondent testified that she benefited from this program. Respondent attended six weeks of the nine-week program. She was unable to attend the remaining three weeks because she was incarcerated for her outstanding criminal matters. After the six weeks of intensive outpatient treatment, respondent participated in Greenbrook's regular outpatient therapy, which consisted of once a week treatment. After two weeks, respondent relapsed, and she blamed this relapse on her inability to connect with the counselor.

Judson Center's foster care case manager explained that the funding was not available for respondent to continue the inpatient treatment at Sacred Heart. At the time, the case manager attempted to find additional funding or an alternative program but was unsuccessful. The DHS foster care worker testified that, more recently, she talked to respondent about attempting to return to inpatient treatment. At that time, respondent discussed this option with her counselor at Greenbrook and later informed the DHS foster care worker that she did not need inpatient treatment. This was also consistent with respondent's own testimony that the counselor at New Vision similarly advised her that inpatient treatment was not necessary.

Based upon the foregoing evidence, it is difficult for this Court to conclude that the trial court clearly erred when it found that petitioner made reasonable efforts to assist respondent toward reunification. Despite petitioner's efforts, alternative sources were not available to fund

respondent's continued inpatient treatment. Alternatively, there was testimony that respondent did not require inpatient treatment but, instead, could have benefited from the treatment that was offered had she been more invested in her treatment plan.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Kurtis T. Wilder

/s/ Donald S. Owens